TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 135.

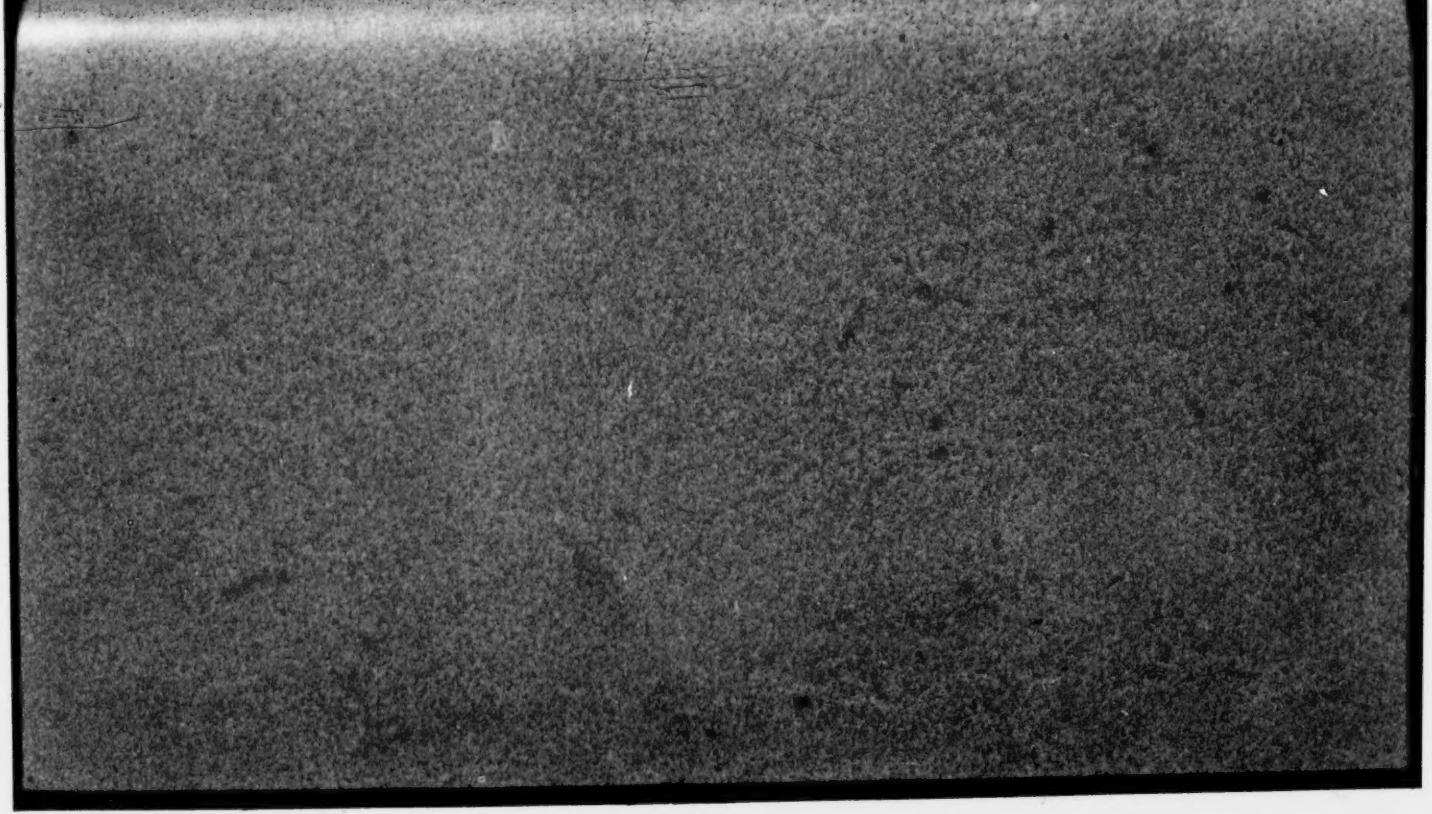
CALUMET GRAIN AND ELEVATOR COMPANY, APPELLANT,

vs.

THE CITY OF CHICAGO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JULY 15, 1902.



(18,225.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 372.

CALUMET GRAIN AND ELEVATOR COMPANY, APPELLANT,

vs.

THE CITY OF CHICAGO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 11, 1901.

a In the United States Circuit Court, Northern District of Illinois, Northern Division.

CALUMET GRAIN AND ELEVATOR COMPANY *vs.* CITY OF CHICAGO, a Municipal Corporation; David Mark Cummings and Grace Dunlap Kennedy, Individually and as Executors of the Will of Columbus R. Cummings.	25742.	In Chancery.

Mr. Warren B. Wilson, solicitor for Calumet Grain and Elevator Company.

Mr. Charles M. Walker, corporation counsel, solicitor for City of Chicago.

1 United States Circuit Court, Northern District of Illinois, Northern Division.

THE CALUMET GRAIN AND ELEVATOR COMPANY *vs.* CITY OF CHICAGO ET AL. } 25742.

To the clerk of the above-entitled court:

You will please prepare transcript of the record in this cause, to be filed in the office of the clerk of the United States Supreme Court at Washington, D. C., under the appeal heretofore perfected to said court and include in the said transcript the following pleadings proceedings and papers on file, to wit:

Bill of complaint,
Demurrer of City of Chicago,
Order of February 8, 1901,
Decree of May 14, 1901,
ssignment of errors,
ppeal bond,
Orders of June 26, 1901,
Clerk's certificate,

Said transcript to be prepared as required by law and the rules of this court, and the rules of the Supreme Court of the United States, and on file in the office of the clerk of the Supreme Court at Washington, D. C. before July 20th 1901.

WARREN B. WILSON,
Solicitors for Appellant.

(Endorsed:) Filed July 12, 1901, S. W. Burnham, clerk.

2 Pleas in the circuit court of the United States for the northern district of Illinois—northern division, in chancery sitting at the United States court-room, in the city of Chicago, in said district and division, before the Honorable Christian C. Kohlsaat, dis-

trict judge, of the United States for said northern district of Illinois, on Tuesday, the fourteenth day of May, in the year of our Lord one thousand nine hundred and one, being one of the days of the regular December term of said court, 1900, and of our Independence the one hundred and twenty-fifth year.

S. W. BURNHAM, *Clerk.*

CALUMET GRAIN AND ELEVATOR COMPANY
vs.
CITY OF CHICAGO, a Municipal Corporation; David Mark Cummings and Grace Dunlap Kennedy, Individually and as Executors of the Will of Columbus R. Cummings. } 25742. In Chancery.

NORTHERN DISTRICT OF ILLINOIS, *Northern Division.*

Be it remembered that on this day to wit: the sixteenth day of November, in the year of our Lord one thousand nine hundred, came the complainant in said entitled cause by its solicitor, Mr. Warren B. Wilson, and filed in the clerk's office of said court its certain bill of complaint in words and figures following to wit:

3 *Bill of Complaint.*

UNITED STATES OF AMERICA, *Northern District of Illinois.*

In the United States Circuit Court, Northern District of Illinois.

To the honorable the judges of the circuit court of the United States within and for the northern district of Illinois, sitting in equity:

Your orator, The Calumet Grain and Elevator Company, humbly complaining unto your honors of the defendants hereinafter named, would respectfully show unto your honors that your orator is a corporation, duly organized under the laws of the State of Illinois, having its principal office and place of business at the city of Chicago in said State. That the defendant, The City of Chicago, is a municipal corporation, organized and existing under the laws of the State of Illinois and entirely located in the northern district of Illinois.

That the defendants, David Mark Cummings and Grace Dunlap Kennedy, are the only children and heirs at law of Columbus R. Cummings, and the sole residuary devisees under the will of said Columbus R. Cummings who departed this life at said Chicago. That said last-named defendants are also the executors of the will of said Columbus R. Cummings, which has by the proper probate court of Cook county, Illinois, been duly admitted to probate. That at the time of his death the said Columbus R. Cummings was the owner in fee-simple of the following-described real estate, situate, lying and being in the city of Chicago, county of Cook and State of Illinois, to

wit: Block 108 in the subdivision made by the Calumet & Chicago Canal & Dock Company of parts of fractional sections 5 and 6, township 37, north, of range 15, east of the third principal meridian
4 (a plat of which subdivision was recorded in the recorder's office of Cook county aforesaid, on the 17th day of January A. D. 1874) excepting therefrom the right of way of the Baltimore, Pittsburg and Chicago Railway Company, and also excepting the following portions of said block 108, to wit: Commencing at a point on the south line of 95th street 61.1 feet east of the intersection of the south line of 95th street and the northeasterly line of said right of way of said Baltimore, Pittsburg and Chicago Railway Co., thence running southeast, parallel to said northeasterly line of said right of way 264.2 feet, thence southeasterly 115.7 feet, thence north 225.92 feet more or less to the south line of 95th street; thence westerly 296.37 feet more or less to the place of beginning; and except that portion of said block 108 hereinafter shown to be owned by your orator. And the said defendants, David Mark Cummings and Grace Dunlap Kennedy, as such heirs and devicees of their said ancestor, Columbus R. Cummings are the owners of said last-described realty.

Your orator further avers, that it (your orator) is and ever since the first day of May A. D. 1895, has been the owner in fee-simple of the following-described real estate situate, lying and being in the city of Chicago, Cook county, Illinois, to wit: Commencing at a point in the northeasterly line of the Baltimore, Pittsburg & Chicago Railway Company's right of way 740.22 feet southeasterly from the intersection of the northeasterly line of said right of way of said Baltimore, Pittsburg & Chicago Railway Company and the south line of 95th street, thence in a southeasterly direction along said northeasterly line of said right of way for a distance of 356.73 feet, thence in a northeasterly direction along the east line, (or water line) on the west bank of the Calumet river for a distance of 300 feet to a point, thence in a southwesterly direction for a distance of 193.09 feet to the place of beginning. That the portions of said block 108 owned by your orator, and by said defendants, David Mark Cummings and Grace Dunlap Kennedy together constitute the whole of said block 108.

That the said portion of said block 108 owned by your orator, adjoins immediately on the south, the above-described tract owned by the said defendants, David Mark Cummings and Grace Dunlap Kennedy.

Your orator further shows unto your honors that said block
5 108 fronts to the east upon the stream known as the Calumet river, having a frontage of more than 800 feet on said river and that the portion of said block 108 which your orator owns has a frontage upon said Calumet river of about 300 feet, and that your orator as the owner of said portion of said block 108 is also owner of the land under the water of the said stream, opposite to and in front of said portion of said block 108, up to the center line thereof, and the defendants, David Mark Cummings and Grace Dunlap Kennedy, are the owners of the land under the water of said stream opposite

and in front of the portion of block 108 owned by them to the center line thereof, save and except as their titles thereto may be affected by the deed of conveyance theretofore made by Columbus R. Cummings from whom your orator and said defendants, David Mark Cummings and Grace Dunlap Kennedy derive title to said premises to the United States, which is hereinafter more fully stated and referred to.

Your orator further shows unto your honors that the said Calumet river is a navigable stream, having its natural outlet into Lake Michigan, and forming at its mouth what is known as the harbor of South Chicago in said city of Chicago, and that it is one of the navigable waters of the United States. That the waters of said stream from its mouth at said harbor of South Chicago to and beyond the said block 108 and in front of the entire part of said block 108, fronting on said stream are navigable waters accessible from States of the United States, other than the State of Illinois in which they lie, and from foreign nations; that upon said waters of said stream opposite said block 108 a large commerce with foreign nations and among the several States is now, and for a long time has been carried on, and said stream in front of the whole of said block 108 and to Lake Michigan is and for a long time has been a highway of commerce between said State of Illinois, and other States of the United States and among the several States, and with foreign nations.

That in its natural and unimproved condition said river was navigable for only small vessels and for only a short distance above its outlet into Lake Michigan, but that it has been improved by the United States, and its channel lines have been established, and its channel deepened and broadened.

That by an act of Congress approved August 2nd, 1882, an appropriation was made for the improvement of the harbor at the
6 outlet of said stream, and it was provided that with a view to the improvement of the Calumet river from its mouth to the fork at Calumet lake, a point above said block 108 the Secretary of War should appoint a board of engineers, who should examine said river and report upon the practicability and the best method of perfecting and maintaining a channel for through navigation, limiting and locating the lines of channel to be improved by the United States and of docks that might be constructed by private individuals, corporations or other parties, and clearly defining the same under the direction of the Chief of Engineers, of the United States Army, and that the Secretary of War should report to Congress the result of said examination and the cost of such improvement.

That thereafter, the Secretary of War appointed such board of engineers, and that said board examined said river and caused a survey thereof to be made defining the lines of the channel thereof and of docks to be constructed thereon under the direction of said Chief of Engineers; and that the said Secretary of War thereafter reported to the Congress of the United States the estimated cost of the improvement of said river.

That thereafter by act of Congress passed July 5th, A. D. 1884, an appropriation by the Government of the United States was made for the improvement of said Calumet river, and it was provided in said act that no portion of the sum appropriated thereby for said improvement, "shall be expended until the right of way shall have been conveyed to the United States free from expense and the United States shall be fully released from all liability for damages to adjacent property to the satisfaction of the Secretary of War."

That thereafter the United States caused a plat to be made establishing the channel of said river including the portion thereof in front of said block 108 and its lines and fixing and establishing the dock lines thereof, which said plat was approved by the Chief of Engineers of the United States Army and duly recorded in the recorder's office of Cook county aforesaid.

That after the making of said survey and the establishment by the United States of the channel and dock lines of said Calumet river, in pursuance of the said proviso in said act of Congress of July 5, 1884, making said appropriation for the improvement of said river,
7 and of a similar proviso in the river and harbor act of August 5, 1886, continuing said improvements, the said Columbus R. Cummings, who was then the owner of the whole of said block 108 except the north 200 feet thereto and including the tract herein shown to be owned by your orator, by his deed of conveyance, bearing date the 5th day of January, A. D. 1888, granted to the United States of America a free and unobstructed right of way in front of said block 108, except the north 200 feet thereof which said Cummings did not then own, but the title to which was subsequently acquired by him, the said right of way being bounded and described in said deed of conveyance as follows, to wit: a free and unobstructed right of way in front of said block 108 described as follows: that portion lying between the proposed dock lines of the Calumet river, as shown upon the plat thereto attached and made a part thereof, of block 108 (except the north 200 feet) in South Chicago, a subdivision made by the Calumet & Chicago Canal & Dock Company, of part of section 5 and 6, township 37, north range 15, east of the third principal meridian being a part of the channel of the Calumet river, as established and shown on the plat thereof, approved by the Chief of Engineers of the United States Army and duly recorded in the recorder's office of Cook county, Illinois, in which deed it was further provided that the shore or dock lines of said river as established and shown on said plat should thereafter for all purposes be taken as the true meandered lines of said stream and that the United States should thereafter have a free and uninterrupted right of way over and along the Calumet river from a line extended at right angles with the course of the said river from the terminus of the shore or dock lines of the north boundary line of said land to another line extended at right angles with the course of the said river from the terminus of the shore or dock line of the south boundary line of said land and to the center of the stream for the improvement of the said Calumet river pursuant to said act of Congress; and that said Cummings did by said instrument re-

lease to the United States of America all claims and demands of any and every nature which he might then have or thereafter have against it by reason of the improvement of said Calumet river.

That attached to said deed and made a part thereof was a plat showing the said dock or shore line of said block 108, which was des-
8 ignated upon said plat as "proposed dock" line, which said line was the line fixed and established by the Chief of Engineers of the United States Army as the channel or dock line of said river as established and shown on the plat of said river, approved by the Chief of Engineers of the United States Army, and recorded in said recorder's office, which is referred to in said deed.

And your orators further aver and charge the fact to be that said deed was made by said Cummings under the provisions of said act of Congress of July 5, 1884, and of August 2nd, 1886, respectively, and that the making thereof by him was exacted by the United States as a condition precedent to the improvement of said river, and that by and under said deed and the terms and provisions thereof and the acceptance by the United States and the further action of the United States thereunto, the dock line in front of said block 108 became for all purposes thereafter established and fixed as shown by said plat attached to said deed as the "proposed dock" line designated thereon, and that said line was established and fixed by the United States as the true meanderer line of said stream.

Your orator shows unto your honors that a similar deed in all respects was made to the United States, bearing date the 3rd day of November A. D. 1886 by the then owners of the north 200 feet of block 108, Mary D. Burdick and William R. Burdick, her husband, and that subsequently said Columbus R. Cummings acquired by mesne conveyances title to the said north 200 feet of said block 108 from said Mary D. Burdick, and that similar deeds were made to the United States by the owners of all of the property fronting on said Calumet river on both sides thereof from the point of its outlet into Lake Michigan to the limits of the survey and plan of improvement adopted for said river by the United States, and shown on the said plat approved by the Chief of Engineers of the United States Army.

That the United States by its duly authorized officials accepted said deeds of conveyance and thereafter entered upon the improvement of said Calumet river in accordance with the surveys thereof and plans adopted therefor by the Chief of Engineers of the United States Army under the authority and direction of the Congress of the United States, and thereby established said dock or chan-
9 nel line on the west side of said river in the manner and form shown by said plat approved by the said Chief of Engineers and filed for record as aforesaid, a copy of that part of which relating to said block 108 was attached to the said deed so made by said Cummings to the United States *and* And that the United States took possession of said river and caused said channel of said river so fixed and established to be improved in accordance with said plan of improvement.

Your orators further show that on the 19th day of September

1890 the Congress of the United States passed an act to provide for the improvement of various rivers and harbors, and for the regulation of the navigable waters of the United States, and that the seventh section thereof was in the words following, to wit:

SEC. 7. "That it shall not be lawful to build any wharf, pier, dolphin, boom, dam, weir, breakwater, bulkhead, jetty, or structure of any kind outside established harbor lines or in any nevigable waters of the United States where no harbor lines are or may be established, without the permission of the Secretary of War, in any port, roadstead, boom, harbor, navigable river, or other water of the United States, in such manner as shall obstruct or impair navigation commerce or anchorage of said waters, and it shall not be lawful hereafter to commence the construction of any bridge, bridge draw, bridge piers, and abutements causeway or other works over or in any part, road, roadstead, haven, harbor, navigable river or navigable waters of the United States under any act of the Legislative Assembly of any State, until the location and plan of such bridge or other works have been submitted to and approved by the Secretary of War, or to excavate or fill — in any manner to alter or modify the course location, condition, or capacity of the channel of said navigable water of the United States, unless approved and authorized by the Secretary of War;

Provided * * *"

That thereby the United States has assumed jurisdiction and control over all navigable waters and rivers of the United States, including said Calumet river, and forbade the erection of any structure therein without the permission of the Secretary of War.

That on the 3rd of March, 1899, the Congress of the United States passed an act known as the river and harbor act, providing for the improvement of various rivers and harbors and for the regulation of the navigable rivers and harbors of the United States, and that the tenth section thereof was as follows:

SEC. 10. "That the creation of any obstruction not affirmatively authorized by Congress to the navigable capacity of any of the waters of the United States is hereby prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other waters of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition or capacity of any port, roadstead, haven, harbor, canal, lake, harbor of refuge, * * * or the channel of any navigable water of the United States, unless the work has been prior to beginning the same recommended by the Chief of Engineers and authorized by the Secretary of War."

That thereafter, it became necessary for your orator, who was then in the possession of said premises, above described as owned by your orator as such owner, to build a new dock upon your orator's

said premises and that for that purpose your orator caused plans to be prepared for the building of a new dock extending along the entire river front of said premises, so owned by your orator, but wholly to the west of said dock — meandered line as established by the United States as aforesaid, which your orator proposed to build in conjunction with the building of a new dock along the 479 feet of said block 108 lying north of your orator's said premises, which was then, and is now, owned by the defendants, Davis Mark Cummings and Grace Dunlap Kennedy, and on which they were also proposing to build a new dock. And that accordingly plans were prepared for the building of such new docks both in front of the premises so owned by your orator and the said 479 feet of said block so owned by the said David Mark Cummings and Grace Dunlap Kennedy and your orators show that said new dock of your orator was to be built entirely upon the land belonging to your orator within the line so established as the dock line by the United States.

11 That said plans were thereafter submitted on behalf of your orator and by David Mark Cummings for himself and the defendant, Grace Dunlap Kennedy to the Secretary of War of the United States and to the Chief of Engineers of the United States Army, and application was made to said Secretary of War for permission to rebuild said dock in front of said block 108 along the lines shown on said plans.

That the said plans for the building of said dock were approved by the United States engineers, stationed at the city of Chicago, and subsequently recommended by the said Chief of Engineers, and that under date of May 12, 1900, Elih- Root Secretary of War of the United States authorized the said improvement and granted permission to your orator and to David Mark Cummings, as executor of said estate, who in making said application was acting both for himself and the defendant, Grace Dunlap Kennedy to rebuild said docks in front of said block 108, so owned and held by your orator and said David Mark Cummings and Grace Dunlap Kennedy along the lines shown by said plans subject, however, to the condition that the work of building said docks should be done subject to the supervision and approval of the engineer officer of the United States Army in charge of the locality and at the same time granted similar permission to said David Mark Cummings as executor of the estate of Columbus R. Cummings who received permission for himself and said defendant, Grace Dunlap Kennedy to build the proposed dock in front of said 479 feet of said block along the lines shown by said plan, and issued to your orator and to David Mark Cummings as executor of said estate (who was acting also for the defendant, Grace Dunlap Kennedy as aforesaid) a written permit for and thereby authorized the building of said proposed dock along the lines shown on said plan, which was attached to said permit and made a part thereof, which permit recited and set forth the provisions of said section 10 of said act of Congress, approved March 3, 1899, which is hereinabove set forth, and your orators attach hereunto, marked "Exhibit A", a copy of said permit and of the

plan attached thereto, which they pray be taken as part of this bill of complaint.

And your orators aver and charge the fact to be that said permit was issued and said permission granted by said Secretary of War under and in accordance with the provisions of said act of Congress approved March 3, 1899; and that upon the approval and
12 recommendation of the said plan for the building of said proposed dock by the said Chief of Engineers and upon the authorization thereof by said Secretary of War and the issuance of said permit your orator became of lawful right entitled by virtue of the said provisions of said act of Congress of March 3, 1899, and of the law in that regard to build said proposed dock in front of said premises so owned by your orator along the lines shown by said plans, subject only to the said condition that said work should be subject to the supervision and approval of the engineer officer of the United States Army in charge of this locality, where said block is located.

Your orator further avers that complainant is and for a long time has been and was at the time of the issuance of said permit, by the Secretary of War, and of the making of application therefor, and for a long time prior thereto had been engaged in the business of buying, selling, receiving and shipping grain, and in its said business has and had and uses, and during all said period has used in its said business a large and valuable grain elevator, situated on said property, so as above shown, owned by your orator, and which has been built and maintained at great expense for said purpose. That your orator constantly receives, and has for many years last past received at its said elevator, large quantities of grain shipped to your orator from States of the United States other than the State of Illinois and ships and for many years last past has shipped from its said elevator large quantities of grain over said Calumet river to points in other States of the United States, and in foreign countries, loading said grain from its said elevator into vessels navigating said Calumet river, Lake Michigan and the navigable waters, and that the rebuilding of said dock in accordance with the said authorization of the Secretary of War is necessary to the economical conduct of its said business and commerce with States other than Illinois and with foreign countries.

Your orator further avers that it has entered into negotiations with contractors to furnish the material and do the labor necessary to construct said improvement in all respects according to the terms and requirements of said permit so issued by said Secretary of War, and was, and is about to enter upon the construction thereof. But your orator was and is prevented from proceeding with said work, and rebuilding said dock by the threats and declarations of
13 the defendant, The City of Chicago, through its police officials and agents, that it will by force prevent your orator from commencing or prosecuting said work and will arrest any persons who may attempt to do any part of said work. The said defendant, The City of Chicago, by its said officials and agents, declares that it will not permit said work to be done or commenced, unless a permit or license therefor shall first be issued to your orator by certain

officials of said City of Chicago from the department of public works of said city.

That said Calumet river at its mouth and at the point where your orator and said defendants, Cummings and Kennedy are about to construct said docks by and under permit from the Secretary of War is within the limits of the city of Chicago, and that the City of Chicago asserted and claimed the right to put a stop to said work and to prevent those, who were engaged in it, from continuing therein, because no permit had been issued from its department of public works, under certain ordinances which had been theretofore passed by its city council, and which said officials claim prescribe that it should be the duty of the harbormaster of said city to require all parties, who should be engaged in repairing, renewing, altering, or constructing any dock within the city of Chicago to produce such permit, and in default of the production thereof to cause the arrest of such parties so engaged in such work, and to cause the removal of such dock.

That the officials of said city of Chicago asserted and claimed the right to stop said work and prevent its prosecution by your orator and by said David Mark Cummings and Grace Dunlap Kennedy, notwithstanding that the Secretary of War had granted permission and authority for its prosecution, but that thereafter upon further consideration thereof the city engineer of said city, who was and is the officer in the department of public works of said city, who has supervision and charge of the building of docks within the city of Chicago on behalf of said city, agreed with said Cummings and Kennedy that the city had no power or authority to interfere with or prevent the building of said dock by your orators, after it had been approved and authorized by the Secretary of War in accordance with the provisions of the said act of Congress, approved March 3, 1899, and agreed that said work should not be interfered with by the city or its agents. That thereupon said Cummings and Kennedy, by their agents immediately renewed said work and were actively engaged therein, when on the
14 29th day of October, A. D. 1900, they were again stopped by the said City of Chicago through its police, and their contractors and agents and servants were forced to discontinue said work, and were threatened with arrest and violence if they should attempt to continue further with said work.

Your orator further shows that said City of Chicago has by its officers and agents notified your orator that it will not be permitted to commence or continue said work or to built said dock in front of said premises, owned by your orator, notwithstanding the permission and authority so given to it for the building thereof by said Secretary of War, and that it will by its police forcibly prevent the building thereof and will arrest those, who shall be engaged in doing such work, and will remove any dock so built; and it wholly refuses to recognize the permission and authority given to your orator by said Secretary of War to build said dock and your orator's right under the Constitution and laws of the United States to build it by virtue of the said authority and permission granted and more particularly

under said act of Congress of March 3, 1899, by the Secretary of War and the approval and recommendation of the plans therefor by the Chief of Engineers of the United States Army.

And your orator avers and claims under the acts of Congress hereinabove set forth the right to built said dock in front of their said premises in accordance with the permit so issued by the Secretary of War and along the lines shown upon the plan attached thereto, a copy of which is "Exhibit A" to this bill, and your orator charges that the United States has taken and now exercises express jurisdiction over said Calumet river, along the entire front of said block 108 and to Lake Michigan and has exclusive jurisdiction with respect to what structures shall be permitted to be built in said river and on what lines, and that the said City of Chicago has no power or authority to interfere with or prevent your orator from building said dock in front of their premises in accordance with their permission granted them by the Secretary of War by virtue of the said act of Congress of March 3, 1899, and along the lines shown by said plan, which has been approved and recommended by the said Chief of Engineers, and is acting in violation of your orator's rights and contrary to law in so doing.

15 Your orator further shows, that they fear in view of the action heretofore taken by said city and its police in stopping said work being prosecuted by said Cummings and Kennedy and of the notice which has been given to your orator and the threats which have been made of forcibly stopping said work and of arresting all, who shall attempt to engage therein, that any attempts on its part to commence or prosecute said work will necessarily be futile and will lead to breaches of the peace and conflicts between the men engaged in said work and the police of the city of Chicago.

Your orator further shows that the right to build said dock in front of your orator's premises in accordance with the permission and authority given them as aforesaid by the Secretary of War and on the lines recommended by the Chief of Engineers aforesaid, and within the dock line established by said survey and by said deed from said Cummings to the United States is a property right, which your orators now have as the owners of said premises and of the land upon which said dock is to be built, and that the action of the City of Chicago, in thus preventing the building of said dock by your orators is a taking of your orator's property without due process of law, and a taking thereof for public use without just compensation in violation of the 5th amendment to the Constitution of the United States. And your orator avers that the matters in dispute in this cause exclusive of interest and costs exceeds the sum or value of $2,000.00 two thousand dollars.

Your orator further avers that the said action of the said defendant, The City of Chicago in preventing your orator from building its said dock is materially interfering with and impeding the prosecution by your orator of its said business and commerce with States of the United States, other than Illinois and with foreign nations.

That the dock about to be built by your orator and that proposed to be built by the said David Mark Cummings and Grace Dunlap Kennedy are strictly in accord with the term of said authorization by said Secretary of War.

Your orator further avers that prior to the filing of this, its bill, your orator applied to the defendants, David Mark Cummings and Grace Dunlap Kennedy individually, and as executors of the will of Columbus R. Cummings to join your orator as co-complainants in a bill in equity to secure an injunction against the defendant, The City of Chicago, its officers and agents from interfering with the work of rebuilding said docks in accordance with the said authorization of the Secretary of War,

but they and each of them refused either individually
16 or as executors to join your orator as such co-complainants.

All which matters and things are contrary to equity and good conscience, and forasmuch as your orator is without remedy in the premises, according to the strict rules of the common law and can only have relief in a court of equity, where such matters and things are cognizable and relievable.

To the end that the said, The City of Chicago, David Mark Cummings and Grace Dunlap Kennedy individually and as executors of the will of Columbus R. Cummings, deceased, who are made parties defendant hereto, may each full, true, direct and perfect answer make to all and singular the matters and things herein contained (but not under oath, the answer under oath being hereby waived).

That a writ of injunction may issue out of this honorable court enjoining and restraining the defendant, The City of Chicago, from in any way interfering with the building of said dock in front of said premises so owned by your orator according to said terms and conditions of said permit by said Secretary of War, and enjoining and restraining the said defendant, The City of Chicago, its officers, servants and agents from interfering with the building of said docks by your orator and said defendants, David Mark Cummings and Grace Dunlap Kennedy, individually and as executors of the will of Columbus R. Cummings, according to the terms and conditions of said permit of said Secretary of War and from attempting to prevent the building of said dock according to the terms and conditions of said permit and from arresting or attempting to arrest or interfere with any person so engaged in building the same by reason thereof.

Will your honors grant unto your orator a preliminary restraining order, restraining the said defendant, The City of Chicago, its officers, and agents, as above prayed till the final hearing of this cause.

That upon the final hearing of this cause it may be adjudged and decreed, that under the said acts of Congress, herein set forth, your orators have the right by virtue of the permission so granted by the Secretary of War to build said dock on the lines shown by the plan recommended by said Chief of Engineers, and that the said City of Chicago has no right, power or authority to interfere therewith; and that said preliminary injunction may be made perpetual.

And that your orator may have such other and further relief, as may be meet and fitting in the premises.

17 And may it please your honors to grant unto your orator a subpœna of the United States of America issuing out of and under the seal of this honorable court, directed to the City of Chicago, a municipal corporation, David Mark Cummings and Grace Dunlap Kennedy individually and as executors of the will of Columbus R. Cummings, defendants herein therein and thereby commanding them on a certain day therein to be named and under a certain penalty therein to be expressed to be and appear before this honorable court then and there to answer (but not under oath, such oath being hereby expressly waived) all and singular the premises, and to stand to, perform and abide by such order, directions and decrees as may be made against them, and as to your honors shall seem meet.

And your orators will ever pray, etc.

CALUMET GRAIN AND ELEVATOR COMPANY,
By WARREN B. WILSON, *Their Solicitor.*

WARREN B. WILSON,
Solicitor for Complainant.

STATE OF ILLINOIS, } ss:
Cook County, }

Comes now Martin H. Bennett, who being duly sworn on his oath deposes and says that he is the president of the Calumet Grain and Elevator Company, a corporation; that he has read the foregoing bill of complaint of said company, and that he knows the contents thereof and the same are true in substance and fact, as therein stated.

MARTIN H. BENNETT.

Subscribed and sworn to before me, this 16 day of November, 1900.

S. W. BURNHAM, *Clerk.*

18 Ex. A.

Whereas, by section 10 of an act of Congress, approved March 3, 1899, entitled "An act making appropriations for the construction, repair and preservation of certain public works on rivers and harbors, and for other purposes," it is provided that it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of

any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same;

And whereas, D. M. Cummings, as executor of the estate of C. R. Cummings, and the Calumet Grain & Elevator Company have applied to the Secretary of War for permission to rebuild the dock in front of that part of block 108, in sections 5 and 6, T. 37, R. 15, E., fronting on Calumet river, south of 95th street, Chicago, Illinois, along the lines shown on the attached plans, which have been recommended by the Chief of Engineers;

Now therefore this is to certify that the Secretary of War hereby gives unto said D. M. Cummings, as executor of the estate of C. R. Cummings, and the Calumet Grain & Elevator Company permission to rebuild the dock, at said place, along the lines shown on said plans, subject to the following condition;

That the work herein permitted to be done shall be subject to the supervision and approval of the engineer officer of the United States Army in charge of the locality.

Witness my hand this 12th day of May, 1900.

(Signed) ELIHU ROOT,
Secretary of War.

[Seal of War Office.]

(Copy.)

(Here follows diagram marked p. 19.)

20 (Endorsed:) Filed Nov. 16, 1900, S. W. Burnham, clerk.

21 And on to wit: the 8th day of February, 1901, came the defendant, The City of Chicago, by Charles M. Walker and filed in the clerk's office of said court its certain demurrer in words and figures following to wit:

Demurrer of City of Chicago.

STATE OF ILLINOIS, } ss:
County of Cook, }

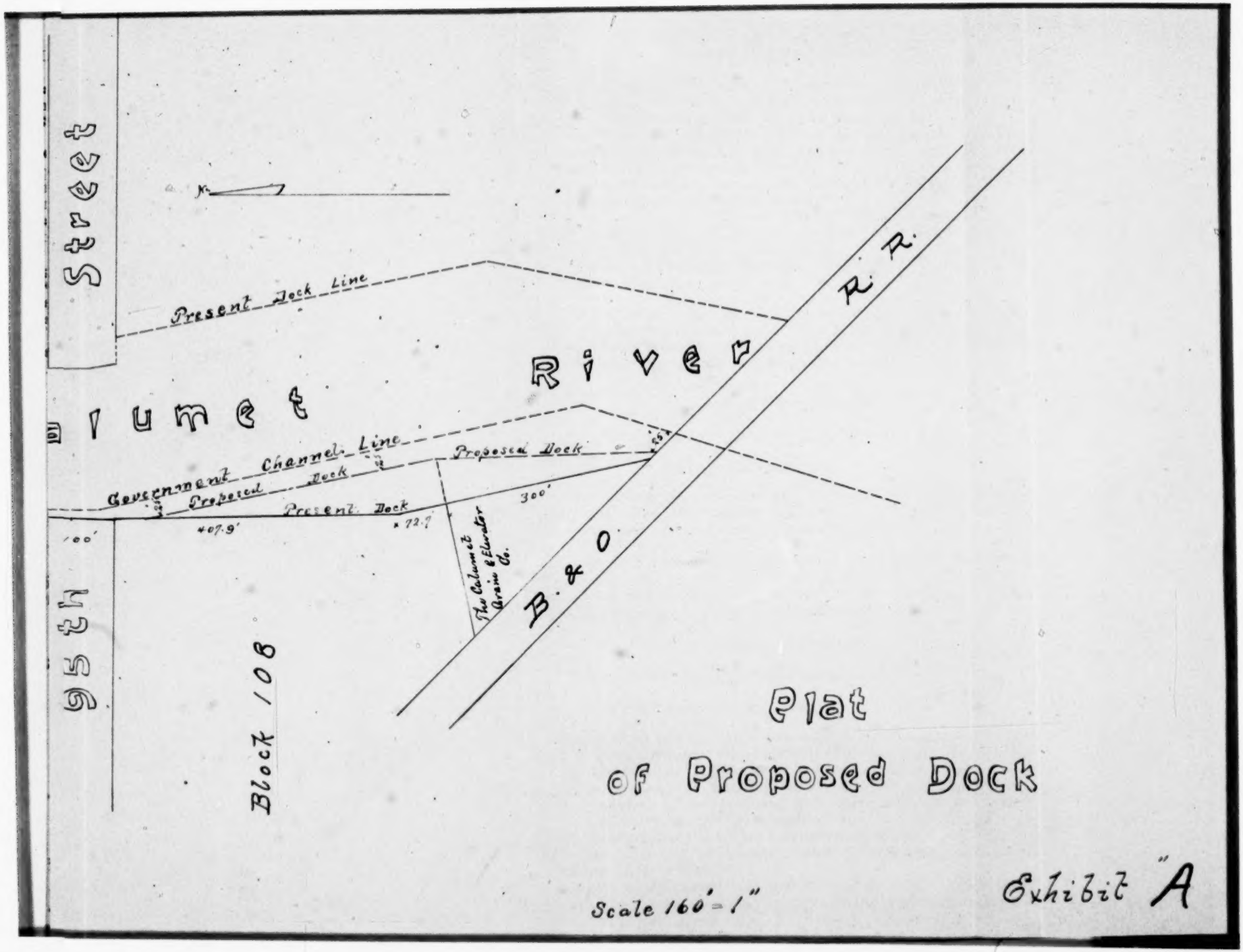
In the U. S. Circuit Court Thereof. In Chancery.

CALUMET GRAIN AND ELEVATOR CO. }
vs. } No. 25742.
CITY OF CHICAGO ET AL. }

The demurrer of City of Chicago, defendant, to the bill of complaint of Calumet Grain and Elevator Co., complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to said bill, and for cause of demur shows, that the complainant has not in and by its said bill,

Street
200'
Gover
South


Street
Present Dock Line
Calumet River
R. R.
Government Channel Line
Proposed Dock
Proposed Dock
Present Dock
407.9'
72.7'
300'
100'
The Calumet Grain & Elevator Co.
B. & O.
South
Block 108
Plat
of Proposed Dock
Scale 160' = 1"
Exhibit "A"

made or stated such a case as entitles it, in a court of equity, to any discovery or relief from or against this defendant touching the matters contained in said bill, or any of such matters.

Wherefore this defendant demurs to the said bill, and to all the matters and things therein contained, and prays the judgment of this honorable court whether it shall be compelled to make any further or other answer thereto, and prays to be dismissed with its reasonable costs in this behalf sustained.

CHARLES M. WALKER,
Solicitor for said Defendant.

(Endorsed:) Demurrer, chancery. Filed Feb. 8, 1900. S. W. Burnham, clerk.

22 And on to wit: the 8th day of February, 1901, in the December term of said court, 1900, in the record of proceedings thereof, in said entitled cause before the Hon. Christian C. Kohlsaat, district judge appears the following entry to wit:

Order of February 8, 1901.

CALUMET GRAIN AND ELEVATOR COMPANY
vs.
CITY OF CHICAGO ET AL. } 25742.

The court having considered and being now fully advised in the premises, it is ordered that the motion of complainant for preliminary injunction be, and the same hereby is denied.

23 And on to wit: the 14th day of May, 1901, in the December term of said court, 1900, in the record of proceedings thereof, in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry to wit:

Decree of May 14, 1901.

THE CALUMET GRAIN AND ELEVATOR COMPANY
vs.
THE CITY OF CHICAGO ET AL. } No. 25742.

And now on this day the above-entitled cause came on for hearing in this court before the Honorable Christian C. Kohlsaat, one of the judges thereof, upon the demurrer of the defendant, The City of Chicago, to the bill of complaint herein, and the court being sufficiently advised in the premises, does order, adjudge and decree that the said demurrer be sustained, and that the bill of complaint be dismissed out of this court for want of equity and that the defendant, The City of Chicago, recover from the complainant, its costs herein to be taxed.

And the complainants thereupon in open court object and except to each of said orders and pray an appeal to the Supreme Court of the

United States from said decree, dismissing their said bill for want of equity and adjudging them to pay to the defendant, The City of Chicago, its costs, and do now file their assignment of errors, which said prayer for an appeal is granted and said appeal allowed upon the complainants filing their bond in the penal sum of five hundred (500) dollars with good and sufficient security to be approved by the court, that the appellants shall prosecute their said appeal to effect and if they fail to make their plea good shall answer all damages and costs.

And thereupon the said appellant presented its appeal bond herein conditioned as above with S. P. Buchanan, as surety, which said bond is now approved.

24 And on to wit the 14th day of May, 1901, came the complainant in said entitled cause by its solicitor and filed in the clerk's office of said court its assignment of errors, in words and figures following to wit:

Assignment of Errors.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois.

THE CALUMET GRAIN AND ELEVATOR COMPANY, Appellant, vs. THE CITY OF CHICAGO ET AL., Appellees. } No. —. Bill.

Assignment of errors.

And now on this day, comes the complainant, and says there is manifest error in the decree record and proceedings of the court in the above-entitled cause, in this, to wit:

1st. The court erred in sustaining the demurrer of the defendant, The City of Chicago, to the bill of complaint herein.

2nd. The court erred in entering the final decree herein, dismissing the bill of complaint out of court for want of equity and decreeing that the complainant pay the said defendant its costs.

Wherefore said appellant, The Calumet Grain and Elevator Company prays that said decree be reversed, annulled and held for naught and said cause remanded to the circuit court for further proceedings.

THE CALUMET GRAIN AND
ELEVATOR COMPANY,
By WARREN B. WILSON,
Its Solicitor.

WARREN B. WILSON,
Solicitor for Complainant.

(Endorsed:) Filed May 14, 1901, S. W. Burnham, clerk.

25 And on to wit the 14th day of May, 1901, came the complainant in said entitled cause and filed in the clerk's office of said court its certain appeal bond in words and figures following to wit:

Appeal Bond.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois.

THE CALUMET GRAIN AND ELEVATOR COMPANY, Appellant, }
vs.
THE CITY OF CHICAGO ET AL., Appellees. }

Know all men by these presents that the Calumet Grain and Elevator Company as principal and S. Percy Buchanan as sure*ties*, are held and firmly bound unto the City of Chicago, in the penal sum of five hundred — $500.00 for the payment of which well and truly to be made, we do hereby bind ourselves, our heirs, and legal representatives by these presents firmly.

The condition of the above obligation is such that whereas the above-bounden The Calumet Grain and Elevator Company, has taken an appeal to the Supreme Court of the United States from the final decree of the circuit court of the United States for the northern district of Illinois in the above-entitled cause.

Now therefore, if the above-bounden, The Calumet Grain and Elevator Company, shall prosecute its appeal to effect and if *he* fail to make *his* plea good shall answer all damages and costs, then this obligation to be void, otherwise to remain in full force and effect in law.

26 Given under our hands and seals at Chicago, this — day of April 1901.

[SEAL.] THE CALUMET GRAIN & ELEVATOR CO.
S. P. BUCHANAN, *Vice-President.*
S. P. BUCHANAN.

Approved: May 14, 1901.

KOHLSAAT, *Judge.*

O. K.
ARMAND F. TEEFY,
Ass't Corporation Counsel,
Sol'r for City of Chicago.

(Endorsed:) Filed May 14, 1901, S. W. Burnham, clerk.

27 And on to wit: the 26th day of June, 1901 being one of the days of the regular December term of said court, 1900, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry to wit:

Order of June 26, 1901.

THE CALUMET GRAIN AND ELEVATOR COMPANY
vs.
THE CITY OF CHICAGO. } 25742.

It appearing to the court that by error of the clerk there appears of record in this case an order under date of February 23rd, 1901, dismissing the bill of complaint herein, which order and decree was not in fact entered herein until the 14th day of May, 1901, it is now ordered that the record in this cause be corrected, and that said entry of said supposed order and decree of February 23rd, 1901 be expunged from the record herein.

28 And on to wit the 26th day of June, 1901, in the December term of said court, 1900, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry to wit:

Order of June 26, 1901.

In the Circuit Court of the United States for the Northern District of Illinois.

THE CALUMET GRAIN AND ELEVATOR COMPANY
vs.
THE CITY OF CHICAGO ET AL. } 25742.

And now on this day upon full consideration, it is ordered, adjudged and decreed, that the entire orders entered in this cause, the 12th day of June, 1901, setting aside the former decree rendered in this cause the 14th day of May, 1901, and dismissing the said bill for want of equity, allowing an appeal and approving appeal bond and granting complainant leave to amend, be and the same *is* vacated and the said decree rendered in this cause on the 14th day of May and all orders set aside and vacated by said orders of June 12th, 1901, be and the same are ordered to stand in full force as if said orders of June 12th, 1901, had not been entered.

29 And on to wit the 26th day of June, 1901, being one of the days of the regular December term of said court, 1900, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry to wit:

Order of June 26, 1901, Extending Time to File Transcript in Supreme Court.

THE CALUMET GRAIN AND ELEVATOR COMPANY
vs.
THE CITY OF CHICAGO. } 25742.

And now on good cause shown, it is ordered that the time for the complainant to file transcript of the record herein on its appea from the decree of May 14th, 1901, to the United States Supreme Court, be extended to the 20th of July, 1901.

30 NORTHERN DISTRICT OF ILLINOIS, } *ss:*
Northern Division,

I, S. W. Burnham, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said court and made in accordance with præcipe filed herein, in the cause entitled Calumet Grain and Elevator Company, complainant *vs.* City of Chicago, a municipal corporation, David Mark Cummings and Grace Dunlap Kennedy, individually and as executors of the will of Columbus R. Cummings, defendants, as the same appear from the original records and files of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the city of Chicago, in said district, this 12th day of July 1901.

S. W. BURNHAM, *Clerk.*

31 UNITED STATES OF AMERICA, *ss:*

To the City of Chicago, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Calumet Grain and Elevator Company is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant as in the said decree mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Christian C. Kohlsaat, district judge this fourteenth day of May, in the year of our Lord one thousand nine hundred and one.

KOHLSAAT, *Judge.*

Filed June 7, 1901

S. W. BURNHAM, *Clerk.*

[Endorsed:] No. 25742 Supreme Court of the United States Calumet Grain and Elevator Company *vs.* City of Chicago. Citation to the Supreme Court of the United States

32 On this seventh day of June, in the year of our Lord one thousand nine hundred one, personally appeared before me, the subscriber, Sherman M. Booth Jr. a clerk in the office of Samuel A. Lynde, an attorney for certain of the defendants herein, and makes oath that he delivered a true copy of the within citation to William Loeffler, city clerk of the defendant, City of Chicago, a municipal corporation etc.

SHERMAN M. BOOTH, JR.

Sworn to and subscribed the 7th day of June A. D. 1901.

H. S. STODDARD, *U. S. Com'r.*

Endorsed on cover: File No. 18,225. N. Illinois C. C. U. S. Term No. 372. Calumet Grain & Elevator Company, appellant, *vs.* The City of Chicago. Filed July 15th, 1901.